

APPEAL NO. 010664

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 12, 2001. The hearing officer resolved the disputed issues by deciding that the compensable injury sustained by the appellant (claimant) on _____, does not include an injury to the cervical spine and that the claimant's impairment rating (IR) is 0% as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed and the respondent (carrier) responded.

DECISION

As reformed herein, the hearing officer's decision is affirmed.

Stipulation 1(I) is reformed as follows to reflect the actual stipulation of the parties: "On September 28, 2000, Dr. J, the designated doctor, assigned a 0% [IR]."

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not include an injury to the cervical spine. The parties stipulated that on _____, the claimant sustained a compensable injury to his right jaw. The claimant testified that on _____, while performing his work duties, he was struck in the jaw and clavicle (collarbone) by a metal pipe. He underwent surgery for his jaw fracture and was also diagnosed as having a contusion of his right collarbone. He was noted to have normal range of motion of his neck in April 2000. The claimant said that two or three weeks after his work-related injury, he began feeling right-sided neck pain. Conflicting evidence was presented regarding the extent-of-injury issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision that the claimant's compensable injury does not include an injury to his neck is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer did not err in determining that the claimant's IR is 0%. Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The parties stipulated that the claimant reached maximum medical improvement on September 28, 2000.

Dr. M, a chiropractor, is the claimant's treating doctor. Dr. G, an orthopedic surgeon who examined the claimant at the carrier's request, certified that the claimant has a 0% IR, but felt that the claimant should be seen by an oral surgeon. Dr. T, the oral surgeon who performed the claimant's jaw surgery, certified that the claimant has a 0% IR. Dr. M, the treating doctor, certified that the claimant has a 13% IR, which included impairment of the cervical spine and impairment for mastication and deglutition. Dr. J, a chiropractor, was

chosen as the designated doctor by the Commission. Apparently, the Commission chose a chiropractor as the designated doctor because the claimant's treating doctor is a chiropractor. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §. 130.6(b)(4)(Rule 130.6(b)(4)). Dr. J certified that the claimant has a 0% IR. Dr. J initially indicated that the claimant should be seen by an oral specialist, but then, upon questioning by the Commission, wrote that after careful review of the claimant's medical records, he found no ratable disorders and did not feel it necessary to refer the claimant for further evaluation. It is noted that Dr. T, the oral surgeon who performed the jaw surgery, had previously certified that the claimant has a 0% IR.

The hearing officer found that the great weight of the other medical evidence is not contrary to the determination of the designated doctor and that his findings are entitled to presumptive weight. The hearing officer's decision that the claimant's IR is 0% is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order, as reformed herein, are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge